

TEMPORARY AGENCY STAFF PROCUREMENT

Head of Service:	Stephanie Osborne, Head of People and Organisational Development
Report Author	Stephanie Osborne
Wards affected:	(All Wards);
Urgent Decision?(yes/no)	No
If yes, reason urgent decision required:	
Appendices (attached):	

Summary

This report outlines the proposed approach for the procurement of a Managed Service Provider for the provision of agency staff.

Recommendation (s)

The Committee is asked to:

- (1) Approve the proposed route to market for the temporary agency staff contract, as set out in paragraph 4.10 of this report.**

1 Reason for Recommendation

- 1.1 The Council has contracted with our current Managed Service Provider (MSP) since August 2016 to resource the Council's need for agency staff. A series of contracts in 2016, 2020 and 2021 have been procured using the Eastern Shires Purchasing Organisation (ESPO) MSTAR 3 framework.
- 1.2 Using a framework for the provision of services to the Council is a commonly used and efficient way to procure services and is supported by our Contract Standing Orders. It is not a way to bypass a competitive tender process as when the council purchases using framework agreement there has already been a competitive tender process to establish the framework in the first place. We can then buy into that other public procurement process. There is no evidence to suggest that doing a separate procurement process of our (limited) needs would deliver better rates than are available through the framework – in fact we have heard that some companies will charge more.

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- 1.3 The Council uses agency staff for a range of functions such as covering sickness absence, additional resourcing for operational priorities and to provide short term cover prior to filling permanent posts, for example, where longer term service needs are under review.
- 1.4 The most recent contract was fully compliant with the Procurement Contract Regulations 2015 (PCRs) and the Agency Worker Regulations, which ensures that agency staff receive equal pay and conditions to those employees within the organisation who do the same work.
- 1.5 The reason for the report to committee is the value of the agency spend plus MSP warrants committee approval under our contract standing orders and we have been advised that this should be considered together but please see 3.1 and 3.2 below for more information. This report is not seeking approval of the agency spend, but to appoint an MSP, whose value / cost to the council is circa £10k annually or less. This would normally fall within threshold one of our contract standing orders and only require one quote to progress.

2 Background

- 2.1 The Council currently uses an MSP to supply temporary agency staff via a neutral vendor solution. The MSP has access to 2,500 agencies nationally, and all suppliers must comply with a standard set of terms and conditions which are audited and regulated by the MSP, assuring clients that they will receive high quality recruitment at a fair price. In addition, the MSP requires a high level of ethics and compliance and dictates competitive fees that agencies must abide by.
- 2.2 Use of a neutral vendor means that we can appoint temporary staff through a single point of contact with full visibility and total control of agency spend. The MSP also assumes responsibility for all contractual risks and obligations, including undertaking pre-employment checks for all candidates, which means that our HR team do not need to do it (we would not be resourced for this if we had to).
- 2.3 Agency staff are a key resource in delivering operational work, covering temporary absences and supporting key projects/programmes. Our reliance on agency staff varies each year depending on business needs.
- 2.4 Consultants are used from time to time to support resources especially where there is limited capacity or where specialist skills are required which may not be available within the organisation. This report does not cover the arrangements for the employment of consultants as when this occurs, it is not through the MSP system. This report also does not cover the process and cost for dealing with the recruitment of permanent staff.

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- 2.5 The MSP provides the Council with a bespoke IT system where requests can be made, candidates assessed and selected and timesheets authorised.
- 2.6 HR have worked with the MSP to support managers in using the system and quarterly contract management meetings take place. These meetings have provided the opportunity to monitor the performance of the contract and to discuss and resolve any issues identified.
- 2.7 This contract has provided greater visibility of spend with real time management information on placements, cost of placements and length of placements, with regular reports being provided by the MSP.

3 Current Spend

- 3.1 Our current MSP is considered good value for money. Our total agency spend (total client net) for period 01/04/2024 till 12/01/2025 was £945,000. Our total Matrix MSP fees over the same period were £6,600. This equates to less than 1% of the overall agency spend through the MSP and a likely value of approximately £10,000 per annum.
- 3.2 The level of spend would not usually warrant a committee report and we have procured this contract previously based on the MSP value. However, discussions with our procurement service, the shared procurement service and the legal team have resulted in advice that we should consider the full value of the contract for this procurement which includes agency worker costs, margin for the agency and MSP costs. When valued in this way it brings the contract into scope for Threshold 4 procurement under the new Contract Standing Orders
- 3.3 The spend on agency staffing through the MSP over the last three financial years is captured in table 1 below.

Table 1

Financial Year	Agency spend through MSP
2023/24	£1,011,936
2022/23	£856,852
2021/22	£1,066,842

4 Options and Proposal

- 4.1 The total contract value which includes wages for agency staff brings this contract into a Threshold 4 procurement.

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- 4.2 Whilst a reasonable and realistically achievable route to market must be sought, a range of options have been considered in ensuring that the recommendations in this report are aligned to operational requirements and represent value for money.
- 4.3 Working directly with agencies is not considered a viable option as we are not currently resourced to take on the legislative requirements of employing agency staff (see 5.5 below on the advantages of using a framework).
- 4.4 Other options are a full tender under the PCRs 2015 (or the Procurement Act 23 if the procurement is to start after 24th February 2025) or to use a framework. A framework is recommended as we are not resourced to manage a full tender process.
- 4.5 The advantages of using the MSTAR4 framework are that.
 - 4.5.1 This framework is fully compliant with UK and EU procurement legislation:
 - 4.5.2 All suppliers are assessed for their financial stability, track record, experience and technical and professional know how.
 - 4.5.3 Pre-agreed terms and conditions to underpin all orders.
 - 4.5.4 Improved accuracy of management information which can be reviewed by HR.
 - 4.5.5 All payments to agency workers will be in line with Agency Worker Regulations.
 - 4.5.6 The fees charged are transparent and clearly recorded.
 - 4.5.7 People and OD can obtain monitoring information and KPI's.
- 4.6 There are a couple of options available using the framework route. These are
 - 4.6.1 Option 1 - Utilising a national procurement framework to directly award a contract to our existing supplier OR
 - 4.6.2 Option 2 - Utilising a national procurement framework to conduct a further competition and award to a neutral vendor
- 4.7 Option 1 recommends that the Council remains with our current supplier and reprocures using a direct award through the ESPO MSTAR4 framework for a neutral vendor service. A new contract with our current MSP will minimise any disruption to services and contract management arrangements will continue to be strengthened to improve the operation of the contract and provide support to hiring managers.

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- 4.8 Option 2 is unlikely to yield a better value for money supplier. As well as the time and resources required to run the procurement exercise awarding to a new supplier would require time and resources of changing systems and could cause disruption to supply and payment of agency workers. Our current supplier is widely used across the sector.
- 4.9 A policy on the Employment of Agency Workers has been developed and is properly referenced in the Contract Standing Orders.
- 4.10 It is recommended that the contract be directly awarded to our current MSP for a further three years as it represents value for money. Moving away from our current MSP would involve a commitment of significant resources that the council doesn't have available at present, and, that the council can compliantly procure an MSP through the framework, which is setup to achieve best value for the public sector organisations that can access it.
- 4.11 Furthermore, with the potential re-organisation of local government there may be the need to re-procure services on behalf of any combined authority. Whilst this is only a possibility at the moment, a lengthy procurement process now may not be in the best interest of any possible direction of travel for local government. A contract of 3 years as set out above may coincide well with any future re-organisation timetable.

5 Risk Assessment

Legal or other duties

5.1 Equality Impact Assessment

The MSTAR4 Framework is fully compliant with the Public Contract Regulations (PCR's), the Council's Contract Standing Orders (CSO's) and Agency Work Time Directive.

5.2 Crime & Disorder

5.2.1 No specific issues

5.3 Safeguarding

All checks are carried out by the relevant agency. ESPO's procurement activity is governed by the Public Contract Regulations 2015 and uses the mandatory standard supplier questionnaire (SSQ) on all its procurements which includes a section on the supplier's approach to the Modern Slavery Act, slavery and human trafficking in the supply chain. As part of ESPO's due diligence on all new suppliers, and proportionate to the level of supply chain risk, additional questions may be posed at the assessment stage to consider how suppliers manage their own supply chain risk.

6 Financial Implications

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- 6.1 In recent years the Council has spent in the region of £0.8m to £1.1m per annum on agency staff through the MSP.
- 6.2 The Council's Contract Standing Orders (22.5) encourages procuring officers to ensure that frameworks have been explored and where possible utilised. The ESPO MSTAR4 framework permits public bodies to make a direct award to suppliers appointed to the framework in a compliant way without further competition. In such cases officers will need to demonstrate that they have obtained value for money.
- 6.3 **Section 151 Officer's comments:** Within the context of current financial challenges the Council should look to reduce high cost agency spend whilst having the staff necessary to deliver services.

7 Legal Implications

- 7.1 The last contract expired in August 2023 and we are now trading on implied terms therefore options to re-procure must be explored.
- 7.2 Our current MSP offers the Council an end-to-end service in a 'neutral vendor capacity', with access to 2,500 agencies. They take on the contractual liability risk so the risk to the Council is reduced.
- 7.3 The proposal ensures the council follows a legally compliant procurement process.
- 7.4 **Legal Officer's comments:** None arising from the content of this report.

8 Policies, Plans & Partnerships

- 8.1 **Council's Key Priorities:** The following Key Priorities are engaged:
- 8.2 **Service Plans:** The matter is included within the current Service Delivery Plan.
- 8.3 **Climate & Environmental Impact of recommendations:** no specific issues
- 8.4 **Sustainability Policy & Community Safety Implications:** no specific issues
- 8.5 **Partnerships:** no specific issues

9 Background papers

- none